

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

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In re:	§	CHAPTER 11 CASE
AGE REFINING, INC.,	§	
	§	CASE NO. 10-50501
Debtor.	§	
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**AGE REFINING, INC.’S MOTION TO APPROVE COMPROMISE
AND CONTRACT AMENDMENT WITH PLAINS MARKETING, L.P.**

AGE Refining, Inc., the debtor and debtor in possession (the “Debtor”) in the above captioned case (the “Case”), file this *Motion to Approve Compromise and Contract Amendment with Plains Marketing, L.P.* (the “Motion”) and would respectfully show:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

II. PROCEDURAL BACKGROUND

2. On February 8, 2010 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”).

3. The Debtor continues to manage and operate its business as debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested or appointed.

4. On March 17, 2010, the United States Trustee appointed the Committee of Unsecured Creditors.

5. The statutory predicates for the relief requested herein are section 105 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure.

6. A further description of the background of the Debtor and the events leading up to the filing of the this Case is provided in the *Unsworn Declaration Under Penalty of Perjury of Lisa Trefger, Director of Business Administration and Regulatory Affairs in Support of First Day Pleadings*, (Doc. No. 4), which is incorporated by reference herein.

7. On February 8, 2010, the Court entered an Order Granting Motion Pursuant to 11 U.S.C. §§ 105(a), 363(b) and 503(b)(9) for Order Authorizing the Debtor to Pay Prepetition Claims of Certain Critical Crude Oil Suppliers and Other Critical Vendors (Doc. No. 38) (the “Critical Vendor Order”). In light of Critical Vendor Order, the Debtor and the respective supplier amended their contracts.

8. On May 5, 2010, there was a fire at the refinery which resulted in the complete demolition of the truck loading rack. As a result, the refinery is unable to accept deliveries of crude oil until the truck loading rack is replaced. The Debtor receives several hundreds of barrels of crude oil each day. Since the accident the Debtor has been in negotiations with its various suppliers regarding diverting the deliveries. One such supplier is Plains Marketing, L.P. (“Plains”).

9. Plains and the Debtor have agreed to modify their contract described as Contract No. 3010-1027, dated February 18, 2010 and ask the Court to approve such modifications as follows:

- Plains ceased all deliveries beginning May 5th
- Contract cancelled as of June 1st.

- Contract will renew for new volume as agreed upon during the month of June for a July start.
- AGE and Plains agree to sell May AGE nominated barrels in May to Plains' alternative refiner so and therefore not accessing any penalty under the ConocoPhillips GTS's settlement amount clause for diverting barrels in May due to AGE's loading rack fire.
- AGE updated the May contract to include one load picked up from New Gulf leases which were agreed upon in email, but not added to contract prior to the first and last load picked up by AGE.

10. The Debtor submits that the proposed stipulation is in the best interests of the Debtor and its estate. Currently the Debtor is not in a position to continue to accept deliveries of crude oil it would otherwise be obligated to accept under the current contract. Failure to accept such deliveries could result in a breach of contract claim or default under the current contract, as well as other penalties. Thus, the above recited terms allow the parties to arrive at a resolution that limits the damages both parties could sustain due to the Debtor's inability at this time to accept these deliveries.

III. REQUEST FOR RELIEF

11. The Debtor requests that this Court approve the modifications to its current contract with Plains pursuant to Federal Rule of Bankruptcy Procedure 9019 and 11 U.S.C. § 105(a)

IV. ARGUMENT AND AUTHORITY

12. Federal Rule of Bankruptcy Procedure 9019 provides that, "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Whether to approve a proposed compromise is a matter within the sound discretion of the bankruptcy court. *See In re Aweco, Inc.*, 725 F.2d 293, 297 (5th Cir. 1984). Additionally, the Court may enter "any order . . . that is necessary or appropriate to carry out the provisions of this title," such as an order approving of this Motion. 11 U.S.C. § 105(a).

13. The Debtor has determined that it is in the best interest of the Debtor's estate to avoid any litigation or penalties, and settle the controversies between it and OGO in the fashion set forth above. The Debtor has considered various factors, including the probability of success in the litigation as well as the expense of the litigation, and determined that granting this Motion is in the best interest of the Debtor's creditors. *See Connecticut Gen. Life Ins. Co. v. United Cos. Fin. Corp (In re Foster Mortgage Corp.)*, 68 F.3d 914 (5th Cir. 1995) (describing the factors to utilize in evaluating a settlement agreement). This Motion helps to avoid litigation and damages which would create substantial expense for the Debtor.

14. Although the Debtor believes that the Fire has created circumstances that would excuse its performance under the contract, the Debtor believes that the modifications proposed for the current contract allow the parties to continue to have a relationship that is beneficial to both parties, provide certainty as to the outcome for the Debtor and any potential purchaser, as well as to the secured lender and other interested parties. Thus, it will be more financially beneficial for the Debtor, its estate and creditors to accept the proposal above.

15. This settlement is the product of arms length and good faith negotiations between the parties, and satisfies the requirements for Court approval of the settlement.

Wherefore, the Debtor requests that this Court approve the modifications to its current contract and grant such other relief to which it is entitled.

Dated: May 19, 2010

Respectfully submitted,

COX SMITH MATTHEWS INCORPORATED

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 19th day of May, 2010, a true and correct copy of the foregoing document was filed with the Court and served electronically upon those parties registered to receive electronic notice via the Court's CM/ECF system and also upon those parties listed on the attached service list via First Class United States Mail.

/s/ Carol E. Jendrzey
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